

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/05/2014

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X
:
UNITED STATES OF AMERICA
:
- against -
:
BERNARD L. MADOFF,
:
Defendant.
:
- - - - -X

ORDER

09 Cr. 213 (DC)

CHIN, Circuit Judge

Frederick Banks has submitted a number of documents in this case, purportedly on behalf of defendant Bernard L. Madoff, but apparently without Madoff's authorization. Because Banks is not an attorney, and because he does not have Madoff's authorization, he may not purport to represent Madoff as counsel.

Moreover, Banks cannot raise claims for relief as a "next friend" of Madoff. A litigant must normally raise his claims in the district court by counsel or by proceeding *pro se*. See 28 U.S.C. § 1654; *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998) ("[B]ecause *pro se* means to appear for one's self, a person may not appear on another person's behalf in the other's cause."). A "next friend" may in some circumstances bring an action "on behalf of [a] detained person, who remains the real party in interest," *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990), but "next friend" standing requires at least two

prerequisites:

First, a "next friend" must provide an adequate explanation -- such as inaccessibility, mental incompetence, or other disability -- why the real party in interest cannot appear on his own behalf to prosecute the action. Second, the "next friend" must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate, and it has been further suggested that a "next friend" must have some significant relationship with the real party in interest. The burden is on the "next friend" clearly to establish the propriety of his status and thereby justify the jurisdiction of the court.

Id. at 163-64 (citations omitted). Mr. Banks has alleged no facts in any of his submissions that satisfy the prerequisites for "next friend" standing.

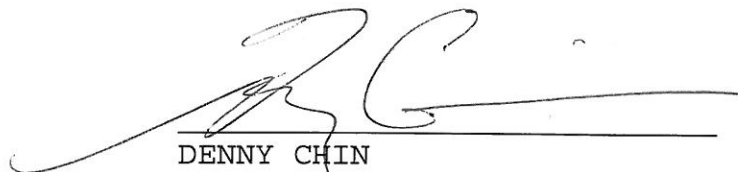
Accordingly, IT IS HEREBY ORDERED as follows:

1. All documents submitted by Banks purportedly on behalf of Madoff are rejected and will be returned to Banks.
2. Any future filings by Banks purportedly on behalf of Madoff will be rejected and returned to Banks.
3. To the extent Banks has sought or will seek relief on behalf of Madoff, the applications are and will be denied, without prejudice to any applications actually made by Madoff.
4. The Clerk of the Court shall forward any and all submissions by Frederick Banks purportedly on behalf of Madoff to Madoff's counsel, Ira Sorkin, Esq., Lowenstein Sandler LLP, and

to the United States Attorney's Office for the Southern District
of New York.

SO ORDERED.

Dated: New York, New York
November 5, 2014

A handwritten signature in black ink, appearing to be 'Denny Chin', written over a horizontal line.

DENNY CHIN
United States Circuit Judge
Sitting By Designation